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SUPREME COURT OF ARIZONA

SUPPLEMENTAL PETITION) Supreme Court No. R-18-0044
REGARDING RULE 45,)
ARIZONA RULES OF PROBATE) Supplemental Petition
PROCEDURE)
)
_____)

Petitioner through its Editorial Group and pursuant to this Court’s August 29, 2019 Order submits this Supplemental Petition concerning Rule 45 of the Arizona Rules of Probate Procedure. The version of Rule 45 that was appended to the Reply has been revised, as shown in the Appendix to this Supplemental Petition.

1. Background. The Court’s Task Force on the Arizona Rules of Probate Procedure filed its Petition in January 2019 and a Reply to public comments in June 2019. The Petition and Reply requested comprehensive revisions to the Probate Rules and revisions to, or adoption of, several probate forms.

On August 29, 2019, the Court entered an Order in R-18-0044 that adopted the new rules and forms, except for Rule 45 (“Conservator’s Inventory, Budget, and Account”). As to Rule 45, the Order directed “that the editorial workgroup of the

Court’s Task Force on the Arizona Rules of Probate Procedure file a supplemental rule petition on or before October 1, 2019, modifying proposed Rule 45 to provide for a mandatory budget and appropriate timeframes.”¹

2. Discussion. The January Petition proposed the consolidation of current Rules 30 (“Guardianships/Conservatorships-Specific Procedures”), 30.1 (“Financial Order”), and 30.3 (“Conservatorship Estate Budget”) into a single new Rule 45, with several notable changes. However, because of the multiplicity of proposed revisions to the Probate Rules, the Petition’s discussion of Rule 45’s budget provisions was brief and simply said, “Under current Rule 30.3, a budget is required ‘unless ordered by the court.’ Under the proposed rule, a budget is required only ‘if the conservator believes it prudent or if the court orders.’ If a budget is timely filed, it is ‘presumed reasonable unless there is an objection.’”

The proposed provision on budgets drew considerable attention, and Task Force members had lengthy discussions concerning its initial proposal following the close of the public comment period. The Task Force then revised Rule 45 and

¹ As explained at page 3 of the Reply, the Editorial Group was a subgroup the Task Force authorized to craft, harmonize or “fine tune” the wording of various rules consistent with the Task Force’s discussions. The Editorial Group was led by the Task Force Chair, Justice Rebecca White Berch (ret.), and included Task Force members Judge Patricia K. Norris (ret.), Judge Jay Polk, and Task Force staff Mark Meltzer.

submitted the revised version with its June Reply; however, it retained the budget as discretionary.

(A) The Court now having directed that budgets be presumptively mandatory, the Editorial Group proposes the deletion of Rule 45(d)(1) (“Necessity”) as that provision was shown in the Task Force’s June version of the rules. The Editorial Group further proposes that Rule 45(d)(2) of the June version be retitled as “Necessity and Timing” and modified. The Editorial Group’s proposed changes to the June version of Rule 45(d)(1) and (2) are accordingly as follows:

~~(1) **Necessity.** At the time of the conservator’s appointment, the court must determine whether to order the conservator to file a budget. The court must make a similar determination when reviewing each account under section (e). In deciding whether to order a budget, the court must consider the value and complexity of the estate and any other factors the court deems relevant. The conservator may file a budget in the absence of a court order.~~

(2) (1) Necessity and Timing. The conservator must file any initial budget no later than the date the conservator’s inventory is due, and The conservator must file any a subsequent budget with the annual each account.

The Editorial Group makes the following observation.

The proposed language concerning mandatory budgets would continue to be modified by the language of proposed Rule 45(a), which this Supplemental Petition proposes to retain without changes. Rule 45(a) says,

(a) Court Authority. The court may order a variation of this rule’s requirements for an inventory, budget, or account, or the form thereof, if the

court finds the variation is consistent with prudent management and oversight of the case.

This provision recognizes that there are exceptions to mandatory requirements for inventories, budgets, and accounts, and that judges should have discretion to determine whether the circumstances of an individual case warrant an exception. As an example of a case that might not require a budget, the Task Force's Reply cited a spouse serving as conservator for an incapacitated spouse when the marital community's recurring income was enough to pay for the incapacitated spouse's care. As another example, a case where the protected person has a life expectancy of less than a year might not require an annual budget.

Similar scenarios were undoubtedly contemplated by the drafters of current Rule 30.3, which requires a budget but is prefaced with the words, "unless otherwise ordered by the court...." Proposed Rule 45(a) is also consistent with the letter and spirit of Arizona Code of Judicial Administration § 3-302(D)(2)(b)(2), which concerns accounting and budget forms 5 through 9. This code section provides that "upon a showing of good cause, the superior court may, in a particular case, issue an order permitting variation of a form, schedule, or worksheet if the court finds that such variation is consistent with prudent management and oversight of the case." Current Rule 30.3 and § 3-302 acknowledge that there are individual and unusual situations in which ordinary requirements might be burdensome, unproductive, or unnecessary.

(B) The August 29, 2019 Order requiring changes to Rule 45 did not concurrently direct the Editorial Group to propose changes to Rule 36, which the Court’s Order approved and adopted. Rule 36 is titled, “Order Appointing Guardian, Conservator, Personal Representative, or Special Administrator.” Rule 36(a)(4) provides:

(4) *Conservatorship Budget.* An order appointing a conservator must specify whether the conservator is required to file an initial budget under Rule 45(d).

If the Court adopts the changes to Rule 45 proposed in this Supplemental Petition, which would presumptively make a budget mandatory, it might want to consider deleting Rule 36(a)(4).

(C) Finally, the Supplemental Petition proposes a new Rule 45(d)(4) titled “copies to interested persons.” This language of this new provision is taken almost verbatim from existing Rule 30.3(C). Although the Civil Rules require that a copy of the budget be provided to all *parties*, a party is only someone who has formally appeared in the case. A.R.S. § 14-5419(C) requires an account to be provided to certain people who might not necessarily be parties. Thus, new Rule 45(d)(4) adds and retains appropriate language contained in current Rule 30.3(C).

3. Discussion of timeframes. The text of proposed Rule 45(d)(2), as submitted with the Reply, provided:

(2) Timing. The conservator must file any initial budget no later than the date the conservator's inventory is due and file any subsequent budget with the annual account.

At first, the Editorial Group did not perceive any issues with the time for filing the inventory or the initial budget (the initial budget is due concurrently with the inventory). However, after filing the Reply, the Editorial Group discussed changing the time for the initial account that was specified in Rule 45(e)(4) of the Reply – from 12 months, as proposed in the Reply, to 9 months, which is the time specified in current Rule 30(b)(1). The rationale is that the Task Force did not provide a comprehensive package that addressed the consequences of the proposed timing change, including modifications to Forms 5 through 9, or the schedules or instructions that accompany those forms, which are based on an initial 9-month account.

The requested reversion to 9 months would require modifications not only to Rule 45(e)(4) (“first account”), but – to align all account requirements in Rule 45(e) with current Rule 30(B) – also to proposed subpart (e)(1) (“timing”) and (e)(5) (“later accounts”). A change to subpart (e)(7) (“format of account”) conforms that provision with the requirement of a mandatory budget. The Appendix shows the newly proposed changes to the version of Rule 45 that was submitted with the Task Force's Reply.

4. Conclusion. The undersigned requests the Court to open this Supplemental Petition for public comment, and that undersigned be allowed to file a reply to those comments, as specified in the Court's August 29, 2019 Order.

RESPECTFULLY SUBMITTED this 25th day of September 2019.

By /s/ _____
Rebecca White Berch (Justice, ret.), Chair,
Probate Rules Task Force

Appendix

The Appendix shows changes to the version of Rule 45 proposed by the Reply in R-18-0044. Deletions are shown with ~~striketrough~~; additions are shown with underline.

Rule 45. Conservator's Inventory, Budget, and Account

(a) **Court Authority.** The court may order a variation of this rule's requirements for an inventory, budget, or account, or the form thereof, if the court finds the variation is consistent with prudent management and oversight of the case.

(b) **Date of Conservator's Appointment.** For purposes of this rule, the conservator's appointment is the date the court first issues letters of appointment.

(c) Conservator's Inventory.

(1) **Timing.** A conservator must file an inventory of a protected person's estate no later than 90 days after the date of the conservator's appointment.

(2) **Contents.** The inventory must contain the information specified in A.R.S. § 14-5418(A).

(3) **Consumer Credit Report.** The conservator must file the consumer credit report required by A.R.S. § 14-5418(A) with the inventory.

(d) Conservator's Budget.

~~(1) **Necessity.** At the time of the conservator's appointment, the court must determine whether to order the conservator to file a budget. The court must make a similar determination when reviewing each account under section (e). In deciding whether to order a budget, the court must consider the value and complexity of the estate and any other factors the court deems relevant. The conservator may file a budget in the absence of a court order.~~

~~(1)~~ (2) **Necessity and Timing.** The conservator must file any initial budget no later than the date the conservator's inventory is due, and The conservator must file any a subsequent budget with the annual each account.

~~(2)~~ (3) **Contents and Format.** The budget must include a reasonable estimate of all anticipated income and expenditures related to the protected person's estate. ~~The~~

~~budget must cover the same time frame as the conservator's annual account. The conservator must use Form 5, 6, or 7, as applicable for the initial budget.~~

(3) ~~(4) Amendments.~~ The conservator must file an amended budget no later than 30 days after reasonably projecting the expenditures for any specific category will exceed the budget by a threshold stated in the instructions to Form 5.

(4) Copies to Interested Persons. The conservator must ~~a~~ provide a copy of the budget, including any amended budget, to all persons entitled to notice of the conservator's accounts under A.R.S. §14-5419(C).

(5) Filing a Budget Presumptions, Objections, and Court Action.

(A) *Presumption; Objection.* A timely filed budget is presumed reasonable unless there is an objection. An interested person may file an objection no later than 14 calendar days after the budget or amendment was filed.

(B) *Hearings and Resolving Objections.* The court may summarily overrule the objection, order the conservator to file a response, or set a hearing on the objection. The court may set a hearing even in the absence of an objection. The conservator has the burden of proving that a contested budget item is reasonable, necessary, and in the best interests of the protected person.

(C) *Court Action.* If the court reviews the budget, it may approve, disapprove, or modify the budget to further the protected person's best interests.

(e) Conservator's Account.

(1) *Timing.* The conservator must file an annual account ~~no later than 90 days after~~ on or before the anniversary date of the issuance of the conservator's permanent letters of appointment.

(2) *Required Attachments.* For each bank or securities account listed on the ending balance schedule, the conservator must attach the statement that corresponds to the ending balance of such account.

(3) *Sustainability.* The ~~annual~~ account must state whether the conservatorship's recurring ~~annual~~ expenses exceed its recurring ~~annual~~ income, and

(A) if so, whether the assets available to the conservator less the estate's liabilities are sufficient to sustain the conservatorship for the protected person's foreseeable needs; and

- (B) if the estate is not sustainable, the conservator must include a discussion of the available options.
- (4) **First Account.** The conservator's first account must reflect all activity relating to the conservatorship estate from the date of first appointment through and including ~~one year from the date of the issuance of~~ the last day of the 9th month after the date the conservator's letters of permanent appointment were issued, or other date set by the court.
- (5) **Later Accounts.** All later accounts must reflect all activity relating to the conservatorship estate from the ending date of the most recently filed account through, and including, the ~~anniversary date of the conservator's letters~~ last day of the 12th month thereafter, or other date set by the court.
- (6) **Final Account.** Except as provided in A.R.S. §14-5419(F) or as ordered by the court, the conservator must file a final account of the protected person's estate no later than 90 days after protected person's death or court order terminating the conservatorship. The final account must reflect all activity between the ending date of the most recently approved account and the date of termination of the conservatorship. The court may extend the date for filing the account or relieve the conservator from filing a final account.
- (7) **Format of Account.** ~~If the court orders a budget, the~~ The conservator must use Form 6, 7, or 8, as applicable,– If the court has not ordered a budget, a unless the court allows the conservator may to use Form 9. Nothing in this rule precludes the court from requiring an alternative form of account or, in appropriate circumstances, waiving an account.
- (f) **Motion for Additional Time.** If the conservator is unable to comply with a deadline established by this rule or court order, the conservator must file a motion for additional time before the deadline. The motion must state why the conservator needs additional time and how much additional time is needed.
- (g) **Confidentiality.** The court must maintain the inventory, the consumer credit report, the budget, and the account as confidential documents under Rule 8.